

REMARKS/ARGUMENTS

Claims 1-14 are pending in this application. By this Amendment, claim 1 is amended and new claims 13 and 14 are added.

First, claim 1 has been revised to replace “A” with “An isolated”. Since such a change was expressly indicated as overcoming the rejection based on 35 U.S.C. § 101, the rejection in this regard should be withdrawn. Applicants also acknowledge the inadvertent characterization of Claims 10 and 11 in the Election as “currently amended.” This oversight is corrected in the current listing of the claims.

Second, the rejection of claims 1, 2, 4-6, and 8-11 based on a lack of enablement is overcome with the change to the claims. That is, the claims are now limited to Arabidopsis and sesame for expression purposes. It is submitted that the Examiner has recognized that SEQ ID NO. 3 and fragments thereof have promoter activity in Arabidopsis and sesame. With this indication and the fact that the claims are now limited to these species, the rejection based on 35 U.S.C. § 112, first paragraph, is overcome and should be withdrawn.

Third, Applicants traverse the rejection of claims 6 and 9 based on a lack of enablement. In the rejection, the Examiner has taken the stance that there is no guidance provided regarding the composition of the strain in question, the location of the deposit of cells, or any guidance regarding any particular culturing, plating or employment methods.

Amendment dated November 9, 2007Reply to Office Action of June 12, 2007

Applicants submit that Example 4 of the specification teaches how to make and use pBinS α FAD2-GUS. Example 5 of the specification teaches how to make and use pS α FAD2-GUS. Therefore, it is not understood how the Examiner can allege that these Examples do not provide the guidance to one of skill in the art to make the expression vectors recited in claims 6 and 9, and the rejection should be withdrawn for this reason. Since it is submitted that claims 6 and 9 are enabled, there is no requirement for submission of a deposit as addressed on pages 8 and 9.

In summary, since the issues of enablement have been overcome for the pending claims and the Examiner has indicated that SEQ ID NO. 3 is patentable over the prior art, claims 1, 2, 4-6, and 8-11 are now in condition for allowance. The indication of allowable subject matter also means that added claims 13 and 14 are in condition for allowance.

CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance. Favorable consideration and prompt allowance are earnestly solicited.

If the Examiner believes that any additional changes would place the application in better condition for allowance, the Examiner is invited to contact the undersigned attorney, **Daniel Y.J. Kim**, at the telephone number listed below.

Serial No. 10/534,128

Docket No. ZEN-0002

Amendment dated November 9, 2007

Reply to Office Action of June 12, 2007

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 16-0607 and please credit any excess fees to such deposit account.

Respectfully submitted,
KED & ASSOCIATES, LLP

Daniel Y.J. Kim
Registration No. 36,186

Correspondence Address:

P.O. Box 221200

Chantilly, VA 20153-1200

703 766-3777 DYK/CWB:dak

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Please direct all correspondence to Customer Number 34610

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